

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Request for Blanket Waiver of)	ET Docket No. 05-345
Section 74.832(h))	

To: Chief, Office of Engineering and Technology

**JOINT REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television, Inc. (“MSTV”) and the National Association for Broadcasters (“NAB”) respectfully submit these reply comments in the above-captioned proceeding. After careful review, it is apparent that the record in this proceeding does not provide sufficient justification for the Commission to grant the request of the Nuclear Energy Institute (“NEI”) and the United Telecom Council (“UTC”) for a blanket, industry-wide waiver to permit use of Telex wireless intercom systems by nuclear power plants. The comments filed in support of a waiver largely parrot the NEI/UTC waiver petition,¹ and offer no new information or justification to support the waiver request. In light of that lack of evidence, and the risk of harm that granting the waiver would cause to the public’s free, over-the-air television service, MSTV and NAB request that the Commission uphold the integrity of its spectrum allocation rules and deny the waiver request.

Furthermore, the Commission should reject the attempt by the New America Foundation *et al.*, (“NAF”) to use this proceeding to promote a proposal far more detrimental to

¹ See Petition for Waiver of Nuclear Energy Institute and United Telecom Council, ET Docket No. 05-345 (filed July 20, 2005) (“NEI/UTC Blanket Waiver Petition”).

the public interest: the introduction of an unlimited quantity of unlicensed devices into the spectrum reserved for the public's free, over-the-air television service. That proposal, as MSTV and NAB have explained elsewhere, would render the broadcast spectrum unusable for everyone, including users of the Telex wireless equipment.

I. THERE IS NO EVIDENCE IN THE RECORD TO JUSTIFY GRANT OF NEI/UTC'S BLANKET WAIVER REQUEST.

A. NEI/UTC and the Commenters Supporting the Waiver Request Overlook Evidence of Part 90-Compliant Solutions.

The comments filed in support of the blanket waiver add nothing new to the deficient NEI/UTC petition. Like NEI/UTC, the supporting commenters ignore numerous, commercially available wireless systems that would provide the same functionality as the Telex equipment on spectrum which can lawfully be used by nuclear power plants without any need for a waiver. Both the Society of Broadcast Engineers ("SBE") and NAF document examples of such wireless systems. One system, the Communications-Applied Technology ("CAT") Intrinsically Safe Wireless Intercom System, is known for a well-established record of safety, performance, durability and dependability, and is advertised specifically for use in nuclear facilities.² As NAF notes, "CAT provides equipment to the Department of Energy for its nuclear facilities, the United States Armed Forces, HAZMAT teams, and others requiring wireless

² See Communications-Applied Technology, Intrinsically Safe Wireless Intercom System, *at* <http://www.c-at.com/ispages/is.html> (last visited Jan. 26, 2006).

communications in hostile environments.”³ The CAT and other Part 90-eligible systems documented in this proceeding feature, among other functions:⁴

- **Hands Free Operation**
- **Interference-free communications** through frequency and channel hopping technology, dual slot diversity and/or headsets with directional, noise canceling microphones.
- **Digital encryption** to ensure secure communications.
- **Full-duplex communications**, further ensuring that communications among parties occurs without interruption.
- **Wireless and hands-free operation**
- **Long-range communication** – over 500 feet for one system⁵ and potentially further through linked base stations.⁶

In light of this evidence, there is no merit to claims like that of Progress Energy, which implies in its comments that only Telex equipment has “[F]requency agile capabilities” and allows “[n]on-interference with existing site wireless frequencies.”⁷ While it may be true, as Energy Northwest asserts, that Telex devices “offer wireless, hands free, full duplex, high fidelity communications between operators,” there is a plethora of other such devices on the

³ See Comments of New America Foundation, Champaign Urbana Wireless Network, and Free Press, ET Docket No. 05-345, at 4 (filed Jan. 17, 2006) (“NAF Comments”).

⁴ See also Comments of the Society of Broadcast Engineers, Inc., ET Docket No. 05-345, at Ex. 2 (filed Jan. 17, 2006) (“SBE Comments”) (providing detailed documentation concerning the Clear-Com CellCom10 and HME DX200 wireless intercom systems).

⁵ See NAF Comments, *citing* <http://www.c-at.com/products.html> (CAT Digital Wireless Intercom System).

⁶ See SBE Comments, at Ex. 2 (HME DX200 digital wireless intercom system).

⁷ Comments of Progress Energy, ET Docket No. 05-345 (filed Jan. 17, 2006) (“Progress Energy Comments”). Other comments suggest that the Telex equipment is necessary in order to permit communications without line-of-sight contact. For example, the Nuclear Management Company (“NMC”) indicates that “the true benefit of the Telex technology” is its ability to permit communications “without being in a ‘line of sight’ configuration.” Comments of Nuclear Management Company, ET Docket No. 05-345 (filed Jan. 17, 2006) (“NMC Comments”). As discussed above, it is specious to claim that no other equipment is available on the market today that would satisfy the nuclear industry’s technical requirements.

market that can be used by nuclear power plants without waiver of the Commission's well-established spectrum management policies.

In light of the above, it is clear that (1) the NEI/UTC petition, as well as the conclusory letters filed in support of it, suffer from the same failure as the waiver request filed by Telex in 2003 and subsequently denied by the Wireless Telecommunications Bureau: they have “not shown that there is no currently available equipment, which operates on Part 90 frequencies, that would safely satisfy the communications requirements of nuclear facilities,”⁸ and (2) there is no new evidence upon which the Office of Engineering and Technology (“OET”) could now grant this second identical request for a waiver.⁹ The waiver petition thus falls far short of the “high hurdle” standard by which the Commission evaluates requests for waiver of its rules.¹⁰

B. The Entities Seeking Waiver of the Rules Also Fail to Address Important Questions as to the Scope of Operation Proposed.

The comments filed in this proceeding underscore other deficiencies of the NEI/UTC waiver request and its failure to adequately protect against interference to free, over-the-air television services. First, the waiver request claims that interference will be mitigated

⁸ *Order In the Matter of Telex Communications, Inc., Request for Waiver to Allow The Use of Certified Wireless Intercom Equipment at Nuclear Facilities for Security Operations Near Reactors*, DA 04-3691 (rel. Nov. 29, 2004) (“Telex Waiver Denial”). A Petition for Reconsideration of that decision remains pending before the Wireless Telecommunications Bureau. *See* Telex Communications, Inc., Petition for Reconsideration (filed Dec. 29, 2004). No action has been taken on this Petition, and the Commission should not allow NEI/UTC to “forum shop” by filing a replica of the denied waiver request to OET while that Petition remains pending before the Bureau.

⁹ *See* Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 05-345 (filed Jan. 17, 2006) (“MSTV/NAB Comments”).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“An applicant for a waiver faces a high hurdle even at the starting gate.”).

because the equipment is used within fortified reactor buildings,¹¹ yet commenters such as Nuclear Management Company LLC and PPL Susquehanna, LLC acknowledge that in some unspecified number of situations, the Telex systems are used outside the buildings.¹² Second, commenters such as Progress Energy make it clear that use of the Telex systems would not be limited to outages, even though it is supposedly during such times that the equipment is necessary.¹³ Third, noticeably absent from the supporting comments is any discussion of whether and how the nuclear power plants would coordinate with impacted broadcasters. This omission is particularly troubling in light of information provided by SBE that, despite the coordination requirement under the nuclear power plant industry's existing "experimental" Special Temporary Authority ("STA"), most plants have *never* contacted SBE to initiate coordination, and in the one case that a plant contacted SBE, the operator abandoned coordination.¹⁴ Finally, not one of the commenters supporting the waiver request indicate that they would seek out, during the *five-year* long requested waiver period, a Part 90-compliant alternative to the Telex equipment.¹⁵

The nuclear power plant industry's failure to address significant questions concerning the scope of operation posed highlights the *post hoc* nature of the supposed justifications for the blanket waiver request. The nuclear power plants seeking waiver of the Part

¹¹ NEI/UTC Blanket Waiver Petition at 9.

¹² See NMC Comments at 1; Comments of PPL Susquehanna, LLC, ET Docket No. 05-345, at 1 (filed Jan. 17, 2006).

¹³ See, e.g., Progress Energy Comments at 1.

¹⁴ See SBE Comments at 4.

¹⁵ See MSTV/NAB Comments at 8 ("Not only would such a lengthy waiver of the Part 74 eligibility rules be unjustified, the industry has made no commitment to stop using the Telex equipment before the length of a waiver term ends, if a viable alternative is developed").

74 eligibility rules did not need to purchase the Telex equipment in the first place, and they now wish to avoid bearing the cost of that inappropriate purchase. Although grant of the waiver would be inappropriate, MSTV and NAB reiterate that the Commission could resolve NEI/UTC's petition equitably by, for example, grandfathering in those power plants that purchased the Telex equipment, on a secondary basis in the band, for a period of three years.¹⁶

II. AS MSTV AND NAB HAVE DOCUMENTED IN ET DOCKET NO. 04-186, THE NAF "UNLICENSED DEVICES" PROPOSAL WOULD HARM THE VIEWING PUBLIC WITHOUT PROVIDING SUSTAINED NEW ACCESS TO SPECTRUM.

The Commission should disregard NAF's attempt to use this proceeding to promote a significantly more dangerous proposal: the proliferation of an infinite number of unlicensed devices into the spectrum reserved for the public's free, over-the-air broadcast service. NAF makes the counterintuitive argument that rather than a "mere" waiver of the Part 74 eligibility rules for a finite number of nuclear power plants, the Commission should open the floodgates to millions of devices without any enforceable interference mitigation mechanism. MSTV and NAB have already provided extensive technical, economic, legal and policy data demonstrating NAF's proposals should be rejected.¹⁷ Following is a brief overview of those concerns, which are provided in detail in ET Docket No. 04-186.

At the outset, the proposal advocated by NAF would provide no reliable means of mitigating interference from the unlicensed devices to viewers of over-the-air television services, thus violating the commitment that the Commission has made to protect the viewers of free,

¹⁶ See MSTV/NAB Comments at 5.

¹⁷ See, e.g., Comments of MSTV and NAB, ET Docket No. 04-186 (filed Nov. 30, 2004); Reply Comments of MSTV and NAB, ET Docket No. 04-186 (filed Jan. 31, 2005). See also Video: Your Neighbor's Static: The Danger's of Operating Unlicensed Radio Devices in the Broadcast Television Band (MSTV 2005), available at <http://www.mstv.org/static.html> (last visited Jan. 27, 2006).

over-the-air television. Moreover, claims regarding the availability of “white space” in which to “insert” unlicensed devices are wildly exaggerated. Especially in larger markets, *no* white space is available for the high-power uses proposed by NAF.

Compounding this already grave risk to the public’s free, over-the-air television service is the fact that the nation is entering the critical last few years of the digital transition. As Chairman Martin has observed, the rules proposed in the unlicensed devices docket may “create additional uncertainty and potentially delay the digital transition.”¹⁸ With over 3200 analog and digital signals on the air right now, adopting the unlicensed devices proposal would risk severe disruption to DTV signals and the digital transition generally.

The NAF proposal should also be rejected because, if adopted, it would render the spectrum unusable for *everyone*. NAF argues that the Commission should “open the benefits of the broadcast band to all.”¹⁹ Yet when too many devices attempt to use the same spectrum to “speak” at the same time, everybody is hurt.²⁰ The unproven “spectrum sensing” technologies on which NAF bases its proposal have yet to be adequately tested, much less proven, to be effective at combating interference from limitless numbers of unlicensed devices to television receivers. Thus, in addition to the likely problems that would be caused to the viewing public and the licensed operators in the spectrum, the nuclear power plants themselves – supposedly one of the beneficiaries of the NAF proposal – would ultimately be denied any access to the spectrum used by Telex devices.

¹⁸ *Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Notice of Inquiry, 17 FCC Rcd 17003 (2002) (Separate Statement of Commissioner Kevin J. Martin, Approving in Part and Dissenting in Part).

¹⁹ NAF Comments at 8.

²⁰ *See, e.g.*, Remarks of former Commissioner Kathleen Abernathy before the San Diego Telecom Council, July 18, 2002.

CONCLUSION

To protect the integrity of the Commission's spectrum management procedures and viewers of free, over-the-air television, MSTV and NAB respectfully reiterate their request that the Commission deny the NEI/UTC waiver request and reject NAF's attempt to use this proceeding to advocate a significantly more dangerous proposal that would allow a limitless quantity of interfering unlicensed devices into the spectrum reserved for the public's over-the-air television service.

Respectfully submitted,

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